

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**JERMAINE DOCKERY, DAVID THOMPSON,
JEFFERY COVINGTON, JOSEPH OSBORNE,
COURTNEY GALLOWAY, PHILLIP
FREDENBURG, JOHN BARRETT,
TAFFOREST CHANDLER, ERIC WARD,
DERRICK HAYES, CHRISTOPHER
LINDSEY, DEXTER CAMPBELL, ALVIN
LUCKETT, JAMES VANN, BENJAMIN
McABEE, and ANTHONY EVANS, on behalf of
themselves and all others similarly situated**

PLAINTIFFS

v.

Civil Action No. 3:13cv326-TSL-JMR

**CHRISTOPHER EPPS, in his official capacity as
Commissioner of the Mississippi Department of
Corrections, GLORIA PERRY, in her official
capacity as Chief Medical Officer for the
Mississippi Department of Corrections, and
ARCHIE LONGLEY, in his official capacity as
Deputy Commissioner for Institutions of the
Mississippi Department of Corrections**

DEFENDANTS

**DEFENDANTS' MEMORANDUM BRIEF IN SUPPORT OF
MOTION TO DISMISS COMPLAINT AS TO PLAINTIFF ERIC WARD
FOR LACK OF SUBJECT MATTER JURISDICTION**

Defendants Christopher Epps, Gloria Perry, and Archie Longley, in their official capacities, submit this memorandum brief in support of their *Motion to Dismiss Complaint as to Plaintiff Eric Ward for Lack of Subject Matter Jurisdiction*, filed contemporaneously herewith.

I. INTRODUCTION

When he filed this § 1983 action, Plaintiff Eric Ward was incarcerated at East Mississippi Correctional Facility. Since then, he has been transferred to another prison. Because he seeks only

declaratory and injunctive relief in the Complaint, his claims have been mooted by that relocation. Therefore, the Complaint as to Plaintiff Eric Ward must be dismissed for want of subject matter jurisdiction.

II. ARGUMENT

Federal courts are empowered to hear “cases and controversies” only. U.S. CONST., art. III, § 2. “Accordingly, an actual, live controversy must remain at all stages of federal court proceedings” *de la O v. Hous. Auth. of City of El Paso*, 417 F.3d 495, 499 (5th Cir. 2005) (quotation marks and citation omitted). In other words, “the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Id.* (quotation marks and citation omitted). “A moot case presents no Article III case or controversy, and a court has no constitutional jurisdiction to resolve the issues it presents.” *United States v. Lares-Meraz*, 452 F.3d 352, 354–55 (5th Cir. 2006) (quotation marks and citation omitted).

When a prisoner who requests only declaratory and injunctive relief in a § 1983 action is transferred to another facility, his claims become moot. *Busick v. Neal*, 380 Fed. Appx. 392, 398 (5th Cir. 2010); *Herman v. Holiday*, 238 F.3d 660, 665 (5th Cir. 2001); *Washington v. McMillin*, 2007 WL 4179763, at *2 (S.D. Miss. Nov. 20. 2007). In the Complaint filed on May 30, 2013, Plaintiff Eric Ward seeks only declaratory and injunctive relief under § 1983 with respect to the conditions of his confinement at East Mississippi Correctional Facility (“EMCF”). [Dkt. 1 ¶¶1, 328.] Mr. Ward was transferred from EMCF to the Wilkinson County Correctional Facility on June 24, where he remains incarcerated today. (Ex. A, Mississippi Department of Corrections Information Sheet.) Therefore, Mr. Ward’s claims are now moot. Accordingly, the Complaint as to Plaintiff Eric Ward should be dismissed for want of jurisdiction.

III. CONCLUSION

For the foregoing reasons, Defendants' *Motion to Dismiss Complaint as to Plaintiff Eric Ward for Lack of Subject Matter Jurisdiction* should be granted.

This the 26th day of July, 2013.

Respectfully submitted,

CHRISTOPHER EPPS, GLORIA PERRY, and
ARCHIE LONGLEY, Defendants

By: s/Harold E. Pizzetta III
Harold E. Pizzetta III, MS Bar #99867
Justin L. Matheny, MS Bar #100754
Office of the Attorney General
Post Office Box 220
Jackson, MS 39205
Phone: (601) 359-3860
Fax: (601) 359-2003
Hpizz@ago.state.ms.us
Jmath@ago.state.ms.us

s/W. Brett Harvey
Gary E. Friedman, MS Bar #5532
W. Brett Harvey, MS Bar #102440
PHELPS DUNBAR, LLP
4270 I-55 North
Jackson, MS 39211
Phone: (601) 352-2300
Fax: (601) 360-9777
friedmag@phelps.com
harveyb@phelps.com

s/Robert H. Pedersen

Robert H. Pedersen (MSB #4084)
Walter T. Johnson (MSB #8712)
WATKINS & EAGER PLLC
Post Office Box 650
Jackson, Mississippi 39205
Telephone: 601-965-1846
Facsimile: 601-354-3623
bpedersen@watkinseager.com
wjohnson@watkinseager.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I, ROBERT H. PEDERSEN, do hereby certify that I have this date electronically filed the above and foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following counsel of record:

Jody E. Owens II
Elissa Johnson
SOUTHERN POVERTY LAW CENTER
111 East Capitol Street, Suite 280
Jackson, Mississippi 39201
jody.owens@splcenter.org
Elissa.johnson@splcenter.org

Gabriel B. Eber
Margaret Winter
Amjel Quereshi
NATIONAL PRISON PROJECT OF THE ACLU
915 15th Street, NW, 7th Floor
Washington, D.C. 20005
geber@npp-aclu.org
mwinter@npp-aclu.org
Aquereshi@npp.aclu.org

Elizabeth Alexander
LAW OFFICE OF ELIZABETH ALEXANDER
1416 Holly St., NW
Washington, D.C. 20012
ealexander@lawofficesofelizabethalexander.com

Counsel for Plaintiffs

and I hereby certify that I have mailed by United States Postal Service a true and correct copy of the above and foregoing pleading to the following non-ECF participant:

NONE

THIS the 26th day of July, 2013.

/s/Robert H. Pedersen